

Insurance Corporation (“BITCO General”) by and through its undersigned counsel, hereby files this Notice of Removal and removes the captioned lawsuit from the Montana Thirteenth Judicial District Court, Yellowstone County, to the United States District Court for the District of Montana, Billings Division. Removal is

based on 28 U.S.C. § 1332, and is authorized pursuant to 28 U.S.C. §§ 1441 and 1446. In support thereof, BITCO General states as follows:

1. Plaintiff Hardy Construction Co. (“Hardy”) commenced this action in the Montana Thirteenth Judicial District Court, Yellowstone County, Cause No. DV 14-1413, and provided a copy of the Complaint to BITCO General via email on October 3, 2014.

2. Pursuant to the requirements of 28 U.S.C. § 1446(a), a copy of the Complaint is attached hereto as part of Exhibit A. A copy of the Notice and Acknowledgement of Receipt of Summons and Complaint that Hardy filed with the state court is also attached hereto as part of Exhibit A. Although the Complaint includes reference to several exhibits, BITCO General has not received any exhibits to the Complaint, and therefore the exhibits are not attached to this Notice. No process, pleadings or orders have been served upon BITCO General to date.

3. This matter involves Hardy’s demand for insurance coverage from BITCO General in connection with a lawsuit captioned Southern Lights, L.P. v. Hardy Construction Co., et al., Cause No. DV-13-1290, pending in the Montana Thirteenth Judicial District, Yellowstone County (the “Underlying Lawsuit”).

4. This Court has original jurisdiction over this action pursuant to U.S.C. § 1332(a) because: (1) there is complete diversity of citizenship between Hardy

and BITCO General; and (2) the amount in controversy exceeds \$75,000, exclusive of interest and costs.

5. Hardy is a corporation organized and existing under the laws of the State of Montana, with its principal place of business in Yellowstone County, Montana.

6. At the time of the allegations set forth in the Complaint, at the time this action was commenced and at the time of this Notice, BITCO General is and was an insurance company incorporated and existing under the laws of the State of Illinois, with its principal place of business in Rock Island County, Illinois.

7. Although the amount in controversy is not expressly set forth in Hardy's Complaint, Hardy seeks to recover damages in excess of \$75,000 from BITCO General.

8. Upon information and belief, the plaintiffs in the Underlying Lawsuit seek damages from the defendants, including Hardy, in excess of \$2 million. In the present action, Hardy seeks damages for defense and indemnity costs relating to the Underlying Lawsuit from BITCO General, and Hardy alleges that BITCO General had the opportunity to settle the Underlying Lawsuit and refused to do so. (Ex. A, Complaint ¶20.)

9. Further, each of the three insurance policies that BITCO General is alleged to have breached has an each occurrence limit of \$1 million. In addition to

damages for breach of contract, Hardy seeks statutory bad faith penalties and punitive damages from BITCO General.

10. Accordingly, when considering the multi-million dollar value of the contracts that were allegedly breached, and the damages sought from Hardy with respect to the Underlying Lawsuit, which amounts Hardy seeks from BITCO General, and the other damages that Hardy seeks from BITCO General, the amount in controversy exceeds the \$75,000 jurisdictional threshold, exclusive of interest and costs.

11. The United States District Court for the District of Montana, Billings Division, is the Federal Judicial District and Division encompassing the Montana Thirteenth Judicial District Court, Yellowstone County, and is the appropriate venue to which removal of the lawsuit should be effected. 28 U.S.C. § 106.

12. This removal is timely in that it is filed within 30 days after receipt by BITCO General, on October 3, 2014, of a copy of the Complaint filed by Hardy, which is the initial pleading setting forth Hardy's claim for relief upon which such action is based. 28 U.S.C. § 1446(b).

13. This Notice of Removal is signed pursuant to Fed. R. Civ. P. 11.

14. Promptly upon filing this Notice of Removal, written notice thereof will be sent to Hardy's counsel, and a copy of the Notice of Removal will be filed

contemporaneously with the Clerk of the Montana Thirteenth Judicial District Court, Yellowstone County, pursuant to 28 U.S.C. § 1446(d).

WHEREFORE, this Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332, and defendant Bituminous Casualty Corporation n/k/a BITCO General Insurance Corporation removes this action to the United States District Court for the District of Montana, Billings Division, as an action properly removed under 28 U.S.C. §§ 1441 and 1446.

DATED: October 31, 2014.

Respectfully submitted,

By /s/ Matthew I. Tourtlotte  
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Attorney for Defendant Bituminous  
Casualty Corporation n/k/a BITCO General  
Insurance Corporation

# CERTIFICATE OF SERVICE

I hereby certify that on October 31, 2014, I electronically filed defendant Bituminous Casualty Corporation n/k/a BITCO General Insurance Corporation's **NOTICE OF REMOVAL and CERTIFICATE OF SERVICE** with the Clerk's office using the CM/ECF System, and served a copy of same via electronic mail upon the following:

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